

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
EASTERN DIVISION**

<b>IN RE:</b>	)	<b>CASE NO: 14-41766</b>
<b>JOHNNY BATCHELOR,</b>	)	
<b>Debtor.</b>	)	<b>CHAPTER 13</b>
	)	
<hr/>		
<b>JOHNNY BATCHELOR,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>AP NO: _____</b>
	)	
<b>MRM MARKETING, INC. and</b>	)	
<b>UNITED CONSUMER FINANCIAL</b>	)	
<b>SERVICES COMPANY,</b>	)	
<b>Defendant.</b>	)	

**COMPLAINT**

**COMES NOW**, the Debtor/Plaintiff, Johnny Batchelor, by and through his attorneys, and brings the following cause of action against Defendants, MRM Marketing, Inc. and United Consumer Financial Services Company:

**PRELIMINARY STATEMENT**

1. This action is filed under the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* (hereinafter "TILA") to recover damages from Defendants and to recover reasonable attorney's fees and costs for Defendants' violation of the TILA and Regulation Z, 12 C.F.R. § 226 (hereinafter "Regulation Z").

2. This Court has proper subject matter jurisdiction over the alleged discharge violation pursuant to 28 U.S.C. § 157(b) and § 1334. This is a core proceeding.

3. Jurisdiction is conferred upon this Court by 15 U.S.C. § 1640(e) and 28 U.S.C. §§ 1331 and 1337.

4. Venue lies in this District pursuant to 28 U.S.C. § 1391(b).

## PARTIES

5. Plaintiff is an individual over the age of nineteen (19) years who resides in Talladega County, Alabama.

6. Defendant, MRM Marketing, Inc. (hereinafter "MRM"), is, upon information and belief, an Alabama corporation with its principal place of business located at 3943 South Lorna Road, Hoover, Alabama 35244. According to records maintained by the Alabama Secretary of State, its director and registered agent is Marcus P. Quinn, whose mailing address is the same as the principal place of business.

7. Defendant, United Consumer Financial Services Company (hereinafter "UCFS"), is, upon information and belief, a Delaware corporation with its principal place of business located at 865 Bassett Road, Westlake, Ohio 44145. According to records maintained by the Ohio Secretary of State, its registered agent is Corporate Creations Network, Inc., whose mailing address is 119 East Commerce Street, Cincinnati, Ohio 45202.

## FACTS

8. On or about March 8, 2014, Plaintiff and Defendants entered into a Retail Installment Contract/Security Agreement (hereinafter the "Agreement") whereby Plaintiff agreed to purchase a vacuum cleaner. *See* attached **Exhibit A**. The required TILA disclosures were also contained in the Agreement.

9. MRM is listed as the seller in the Agreement and was named as the entity to which any cancellation notices should be sent.

10. UCFS' name also appears in the Agreement, but there is no explanation as to what role it played in the transaction.

11. UCFS' name also appears on the Credit Application dated March 8, 2014, while MRM's does not. *See* attached **Exhibit B**.

12. Pursuant to the Agreement, Plaintiff was to make thirty-six monthly payments of \$97.73 beginning on April 28, 2014.

13. The Agreement was dated March 8, 2014, leaving a period of 51 days before the first payment would be made. In other words, the first payment period contained 21 days more than the remaining monthly payment periods.

14. In the Agreement, the annual percentage rate (hereinafter "APR") was disclosed as 19.44 percent.

15. Accounting for the first irregular payment period of 51 days, the correct APR would be 18.66 percent. *See* printout generated by the Office of the Comptroller of the Currency's APR calculator, which is attached hereto as **Exhibit C**.

16. Thus, the APR was overstated by approximately .78 percent.

17. Plaintiff made a downpayment of \$100 at the time he entered into the Agreement.

18. The "Total Sales Price" box, which is part of the Agreement, does not disclose the \$100 downpayment as part of the sales price.

19. MRM and UCFS made no effort to correct the improperly disclosed APR or Total Sales Price.

20. Plaintiff filed a Chapter 13 petition in this Court on November 7, 2014.

21. On December 24, 2014, UCFS filed a proof of claim in the amount of \$2,382.78.  
(Claim No. 4.)

22. Debtor's amended plan, dated December 29, 2014, provides that Debtor will surrender the vacuum cleaner which served as security for UCFS' loan in full satisfaction of its claim. (Doc. No. 29.)

23. MRM has not filed a claim in Plaintiff's bankruptcy case.

#### **COUNT I—TILA VIOLATION**

24. The allegations of paragraphs 1-23 above are realleged and incorporated herein by reference.

25. Because of their failure to account for the extra 21 days in the first payment period, Defendants improperly calculated and disclosed the APR to Plaintiff in violation of 15 U.S.C. § 1638(a)(4).

26. The APR was understated by approximately .78 percent, which is more than the tolerance levels set forth in Regulation Z § 226.22(a)(3).

27. The inaccurate disclosure made by Defendants is a material disclosure as defined by 15 U.S.C. § 1602(v).

#### **COUNT II—TILA VIOLATION**

28. The allegations of paragraphs 1-23 above are realleged and incorporated herein by reference.

29. Pursuant to the TILA, Defendants were required to provide Plaintiff with a "descriptive explanation" of the Total Sales Price. "The descriptive explanation of 'total sale price' shall include reference to the amount of the downpayment." 15 U.S.C. § 1638(a)(8).

30. Defendants violated § 1638(a)(8) by failing to include Plaintiff's \$100 downpayment in their disclosure of the Total Sales Price.

#### **COUNT III—TILA VIOLATION**

31. The allegations of paragraphs 1-23 above are realleged and incorporated herein by reference.

32. Since both Defendants' names appear in the Agreement and neither is identified as the creditor, it is unclear from the TILA disclosures which entity was extending credit to Plaintiff.

33. Defendants failed to clearly disclose the "identity of the creditor required to make disclosure," thereby violating 15 U.S.C. § 1638(a)(1).

#### **PRAYER FOR RELIEF**

WHEREFORE, Debtor respectfully requests this Honorable Court to declare that Defendants are liable to Plaintiff for:

- A. Statutory damages in the amount of \$1,736.56, which is twice the amount of the finance charge, as prescribed by 15 U.S.C. § 1640(a)(2)(A)(i);
- B. Actual damages as provided in 15 U.S.C. § 1640(a)(1);
- C. Costs of this action and reasonable attorneys' fees as provided in 15 U.S.C. § 1640(a)(3); and
- D. For such further and different relief as may be deemed just and proper.

Respectfully submitted this 22<sup>nd</sup> day of January 2015.

*/s/ J. Gabriel Carpenter*

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J. Gabriel Carpenter and  
Harvey B. Campbell, Jr.  
Attorneys for Plaintiff  
CAMPBELL & CAMPBELL, P.C.  
Post Office Drawer 756  
Talladega, AL 35 161-0756  
(256) 761-1858

RETAIL INSTALLMENT CONTRACT/SECURITY AGREEMENT

H.O. COPY

SELLER NAME  
MRM MARKETING, INC.  
ADDRESS  
3943 S. LORNA RD.  
CITY  
HOOVER AL 35244  
NAME OF BUYER (S)  
Johann Butcher  
RESIDENTIAL ADDRESS  
RED BROTHER DR.  
CITY  
SALISBURY ALABAMA 35151

This contract covers your installment purchase from us of the following property:

PROPERTY  
MODEL Sentra II Price  
Serial No. 814C103041 \$3,000  
X Seagull  
Selling Price \$3,290  
Sales Tax \$270

Customer: We've written this Contract in simple language to help you understand its terms. Please read your Contract carefully and feel free to ask us any questions. The words "you" and "your" mean the Buyer(s). The words "we", "us" and "our" mean the Seller shown above or any Holder of this Contract.

UNITED CONSUMER FINANCIAL SERVICES COMPANY  
Sale is subject to credit approval.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

ITEMIZATION OF AMOUNT FINANCED  
1. CASH PRICE (TOTAL of all property above) \$2,750  
2. CASH DOWNPAYMENT \$100  
3. TRADE-IN \$0  
4. TOTAL DOWNPAYMENT (Item 2 plus 3) \$100  
5. UNPAID BALANCE/AMOUNT FINANCED \$2,650 (Item 1 less 4)

The property above is purchased for use primarily for personal, family or household purposes unless another purpose is noted.

Amount Financed	Finance Charge	Annual Percentage Rate	Total of Payments	Total Sale Price	Payment Schedule
\$2,650	\$868.28	19.41%	\$3,518.28	\$3,518.28	36 payments of \$97.73 Starting 4-28-14

First Charge: If any payment is more than 10 calendar days late, you agree to pay a late charge of \$16.00 or 5% of the amount of the scheduled payment in default, whichever is greater, not to exceed \$100.00.

See the reverse side of this Agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment rebates and penalties.

READ ALL OF THE CONTRACTUAL TERMS ON THE REVERSE SIDE. SUCH TERMS ARE A PART OF THIS CONTRACT AS IF SET FORTH AT THIS POINT. YOU ACKNOWLEDGE RECEIPT OF DUPLICATE COPIES OF THIS RETAIL INSTALLMENT CONTRACT, AND HAVE RECEIVED ORAL NOTICE OF YOUR CANCELLATION RIGHTS.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

Signature of Buyer: Johann Butcher Date: 3-8-14  
Signature of Seller: Joe McQuinn Date: 3-8-14  
Salesperson's Title: Joe McQuinn Phone: 205-988-0887

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

NOTICE OF CANCELLATION - 3-8-14

You may CANCEL this transaction, without any penalty or obligation, within THREE BUSINESS DAYS from the above date.

If you cancel, any property titled in, any payments made by you under the contract or sales and any negotiable instrument executed by you will be returned within TEN DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller, at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice, or send a telegram, to

MRM MARKETING, INC. at ADDRESS 3943 S. LORNA RD.  
CITY HOOVER State AL Zip 35244 NOT LATER THAN MIDNIGHT OF 3-12-14

I HEREBY CANCEL THIS TRANSACTION

UNITED CONSUMER FINANCIAL SERVICES COMPANY, 18150 N. 15TH AVE., SUITE 100, DALLAS, TEXAS 75244



AMOUNT FINANCED \$ 2650.00 TERM (MONTHS) 24 BUY DATE 4-28-14

## CREDIT APPLICATION - UNITED CONSUMER FINANCIAL SERVICES UCFS #

IF I AM MARRIED, I MAY APPLY FOR A SEPARATE ACCOUNT

TYPE OF CREDIT REQUESTED:  
(CHECK APPROPRIATE BOX)
 JOINT WITH ANOTHER PERSON, COMPLETE BOTH BUYER INFORMATION SECTIONS.  
 INDIVIDUAL IN YOUR OWN NAME, RELYING ON YOUR OWN INCOME.

## BUYER #1 INFORMATION

FIRST NAME <b>JOHNNY</b>	INITIAL <b>T</b>	LAST NAME <b>Barclay</b>	DATE OF BIRTH <b>RED 7/1</b>	EMPLOYER (SOURCE OF INCOME) <b>Vic-A-Min Employment</b>	YRS. THERE <b>1 1/2</b>	MULTIPLE & CTS
ADDRESS <b>RED Burton Drive</b>			YEARS THERE <b>3</b>	EMPLOYER ADDRESS (CITY, STATE) <b>Cumming, GA</b>		MO. GROSS PAY <b>\$500.00</b>
CITY, STATE <b>Sylva, AL</b>			ZIP <b>35151</b>	JOB TITLE <b>Driver</b>	EMPLOYER PHONE <b>REDACTED 7733</b>	BUSINESS EXTEN <b>#</b>
MAILING ADDRESS (if PO, BOX, ETC.) <b>Same</b>			ZIP <b>35151</b>	PREVIOUS EMPLOYER (if D, then J, Y, or M, E, P, S, I, O) <b>UCF</b>		
<input checked="" type="checkbox"/> BUYING	<input type="checkbox"/> RENTING	<input type="checkbox"/> CO-OP	<input type="checkbox"/> OTHER	<input type="checkbox"/> RENTING	<input type="checkbox"/> OTHER	
AREA CODE <b>REDACTED</b>		NUMBER <b>5230</b>		PREV. JOB TITLE <b>Driver</b>		YRS. THERE <b>6 1/2</b>
TELEPHONE <b>4356</b>		DEPENDENT <b>3</b>		REDACTED <b>ED</b>		<b>@hotmail.com</b>

## BUYER #2 INFORMATION

FIRST NAME	INITIAL	LAST NAME	DATE OF BIRTH	EMPLOYER (SOURCE OF INCOME)	YRS. THERE	MULTIPLE & CTS
ADDRESS			HOME PHONE	EMPLOYER ADDRESS (CITY, STATE)		MO. GROSS PAY
CITY, STATE			ZIP	JOB TITLE	EMPLOYER PHONE	BUSINESS EXTEN
DRIVERS LICENSE / CA I.D. #			CELL PHONE NUMBER	YOUR E-MAIL ADDRESS		

## REFERENCES

LANDLORD OR MORTGAGE HOLDER	PROPERTY VALUE	ACCT. #/PHONE #/ADDRESS OF REFERENCE	MO. PMT.	PRES BAL.
CHASE	\$96,000	REDACTED 3440	\$610.53	\$89,500
1) CREDIT REFERENCE Mortgage Finance		REDACTED D	\$380.00	\$7,890
2) CREDIT REFERENCE SouthFirst / Sylva, AL		REDACTED 4636	\$117.00	\$350.00
CHECKING ACCT? (YES) NO	BANK HAVE BALANCE (Y/N)	SAVINGS ACCT? (YES) NO	HAVE YOU BEEN DECLARED BANKRUPT IN THE PAST 7 YEARS	YES NO
NAME & ADDRESS OF RELATIVE NOT LIVING WITH YOU Tara Hill - Sylva, AL		REDACTED D		
NAME & ADDRESS OF PERSONAL REFERENCE Steve East - Sylva, AL		REDACTED D		

TO THE BEST OF MY KNOWLEDGE, ALL OF THE INFORMATION ON THIS CREDIT APPLICATION IS COMPLETE AND ACCURATE. I AUTHORIZE THE SELLER OR ANY ASSIGNEE (INCLUDING, BUT NOT LIMITED TO, UNITED CONSUMER FINANCIAL SERVICES) TO MAKE WHATEVER INQUIRIES THEY DEEM NECESSARY TO EVALUATE MY CREDIT AND IF THEY EXTEND CREDIT TO COLLECT, SKIP, TRACE OR SERVICE MY ACCOUNT, I EXPRESSLY AUTHORIZE ANY THIRD PARTY (I.E., CREDIT REPORTING AGENCY, CREDITOR, BANK OR FINANCIAL INSTITUTION, EMPLOYER, LANDLORD, ETC.) TO RELEASE WHATEVER INFORMATION IS REQUESTED CONCERNING ME THAT THE SELLER OR ITS ASSIGNEE MAY REQUEST FOR THESE PURPOSES. IF A CREDIT REPORT IS OBTAINED BY AN ASSIGNEE, I AUTHORIZE THE ASSIGNEE TO SHARE INFORMATION IN THAT REPORT WITH THE SELLER.

SEE THE REVERSE SIDE FOR ANY REQUIRED LEGAL NOTIFICATIONS.

 BUYER #1 SIGNATURE **Johnny Barclay** DATE **3-8-14** BUYER #2 SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
 BEST TIME OR DAY TO CONTACT BUYER AT HOME: **Any** OK TO VERIFY AT WORK? **YES** NO
REDACTED  
TED 1477

## AUTHORIZATION FOR PREAUTHORIZED PAYMENTS

(See preauthorized debit information/instructions on reverse side)

Sign here if you authorize United Consumer Financial Services (UCFS) to begin 36 (total # of pmts) monthly electronic funds transfers (EFT Debits) of equal amounts to automatically make all payments required under the credit obligation associated with this credit application and preauthorized payment authorization not to exceed \$ 97.75 (monthly pmt amt). Please attach a VOIDED CHECK so that we can record the correct banking information. This authority is to remain in full force and effect until UCFS is paid in full, or UCFS and/or Bank/Financial Institution have received written notification from me of its termination at such time and in such manner as to afford UCFS and Bank/Financial Institution a reasonable opportunity to act on it.

BUYER #1 SIGNATURE

BUYER #2 SIGNATURE

If you have any questions, please write or call UCFS at 865 Bassett Rd., Westlake, Ohio 44145 (1-800-3-

PLAINTIFF'S  
EXHIBIT

B

## APRWIN - Version 6.2.0

## APR Disclosure Documentation

Prepared By: Gabe Carpenter  
 Date: 1/15/2015  
 Borrower's Name:  
 Account Number:  
 Name of Lender: UCFS/MRM  
 Original Creditor: UCFS/MRM

## Loan Information - Original Input

Amount Financed: \$2,650.00  
 Disclosed (Estimated) APR: 19.4400 %  
 Disclosed Finance Charge: \$868.28  
 Loan Secured by Real Estate or Dwelling: No  
 Loan Date Earlier than 9/30/95: No

Payment Frequency: Monthly (Installment Loan)

## Disclosure Information - Output

Amount Financed: \$2,650.00  
 FINANCE CHARGE: \$868.28  
 Total of Payments: \$3,518.28  
 ANNUAL PERCENTAGE RATE: 18.6558 %

\*\* VIOLATION \*\* APR is overstated by: 0.7842 %

Payment Stream	Payment Amount	Number of Payments	Whole Unit Periods	Odd Days
-----	-----	-----	-----	-----
1	\$97.73	36	1	21

